

REMARKS

In the Office Action dated February 14, 2007, claims 1-20 were presented for examination. The Examiner objected to the Specification, and provided explicit elements of the objection, and the Examiner also objected to the claims as containing informalities, and provided explicit elements of the objection. The Examiner rejected claims 15-20 under 35 U.S.C. §101. The Examiner rejected claims 3, 8, 11, and 14 under 35 U.S.C. §112, second paragraph. Claims 1-20 were rejected under 35 U.S.C. §102(e).

The following remarks are provided in support of the pending claims and responsive to the Office Action of February 14, 2007 for the pending application.

I. Objection to the Specification

In the Office Action dated February 14, 2007, the Examiner assigned to the application objected to the Specification. More specifically, the Examiner objected to a number of grammatical elements as specified in the Office Action. Applicants have amended the specified elements of the Specification and have attached replacement sheets for those amended portions. Based upon the amendments presented herein, the informalities have all been corrected. Accordingly, Applicants respectfully requests that the Examiner remove the objection to the Specification.

II. Objection to Claims 1-2, 6-10, 14-15, and 18

In the Office Action dated February 14, 2007, the Examiner assigned to the application objected to claims 1-2, 6-10, 14-15, and 18 as containing informalities. The Examiner specified in the Office Action that informalities in each of the above-noted claims. Applicants have amended each of the above-referenced claims, specifically claims 1-2, 6-10, 14-15, and 18 to clarify the objected to terms. Based upon the amendments presented herein, the informalities have all been corrected. Accordingly, Applicants respectfully request that the Examiner remove the objection to claims 1-2, 6-10, 14-15, and 18 and grant allowance thereof.

III. Rejection Under 35 U.S.C. §101

In the Office Action dated February 14, 2007, the Examiner assigned to the application rejected claims 15-20 under 35 U.S.C. §101 as being directed to non-statutory subject matter. More specifically, with respect to claims 15 and 16, the Examiner rejected the signal bearing medium as claimed. Although the Examiner did not provided a suggested amendment to these claims, Applicants have amended claim 15 to remove the “signal bearing medium” limitation and to replace this with language pertaining to a storage medium. The amendment presented herein removes the non-statutory subject matter of the claim 15 and replaces it with tangible statutory subject matter. Accordingly, Applicants respectfully request that the Examiner remove the rejection of claims 15-20 under 35 U.S.C. §101, and direct allowance thereof.

IV. Rejection Under 35 U.S.C. §112, second paragraph

In the Office Action dated February 14, 2007, the Examiner assigned to the application rejected claims 3, 8, 11, and 14 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More specifically, the Examiner asserted that the language in claim 3, line 1 is unclear as to whether the new leader candidate is the same candidate defined in claim 1. Applicants have amended claim 3 to clarify the dependency of this element. The rejections of claims 8, 11, and 14 are based upon the same reasoning. Applicants have amended each of claims 8, 11, and 14 in the manner of claim 3 to clarify the dependency of this element. Accordingly, Applicants respectfully request that the Examiner remove the rejection of claims 3, 8, 11, and 14 under 35 U.S.C. §112, second paragraph, and direct allowance thereof.

V. Rejection Under 35 U.S.C. §102(e)

In the Office Action dated February 14, 2007, the Examiner assigned to the application rejected claims 1-20 under 35 U.S.C. §102(e) as being anticipated by *Nishanov et al.*, U.S. Patent No. 6,662,219.

The *Nishanov et al.* patent pertains to a computer network of servers arranged in a server cluster. During a cluster re-formation the servers of the cluster and it's associated partitions, *i.e.*

subgroups of servers, arbitrate for the position of cluster leader by arbitrating for possession of the quorum resource. Each subgroup of servers is biased by a weight assigned to the subgroup to determine its capability of representing the cluster. See Col. 11, lines 11-13. “The biasing weight of each subgroup may be determined by node count and/or by a calculation of the subgroup’s resources.” See Abstract. It is the quantity of nodes in the subgroup and/or the resources in the subgroup that are factors to compute the weight of the subgroup. See Col. 13, lines 23-28.

However, the weight of *Nishanov et al.* is only a factor in determining whether one of the nodes in the group would be appropriate as a cluster leader. Applicants’ invention as represented in the amended claims is different than that of *Nishanov et al.* More specifically, as demonstrated in the enclosed amendment, Applicants’ invention elects a cluster leader for a group of nodes, regardless of the access of the cluster leader to resources. It is only after the cluster leader has been elected that the access of the elected leader to the resources is considered as a factor in accessing the quorum resource. Support for this amendment is clearly demonstrated in Fig. 4 at step 118, and can be found in the Specification in the detailed description of Fig. 4. However, *Nishanov et al.* does not teach election of a cluster leader prior to a determination of access to resources. Rather, *Nishanov et al.* teaches access to resources as a “weight” factor in whether the server should even be considered a candidate for the cluster leader position, but not as a factor to be considered subsequent to the election process. Applicants’ invention does not consider the element of access to resources within the initial cluster leader election process and have amended claims 1, 9, and 15 to include and clarify the structure of the cluster leader election process to clarify this distinction.

Based upon the above, it is Applicants’ position that the rejection under *Nishanov et al.* is improper and should be removed. In order for the claimed invention to be anticipated under 35 U.S.C. §102(b), the prior art must teach all claimed limitations presented by the claimed invention. “A claim is anticipated only if each and every element as set forth in the claim is

found, either expressly or inherently described, in a single prior art reference.”¹ *Nishanov et al.* does not disclose a cluster leader election process wherein a candidate for the position is elected and only after the election is there consideration of connectivity of the elected leader to select resources. Since *Nishanov et al.* does not teach or suggest placing the burden of the connectivity as a factor subsequent to the election of the cluster leader, clearly *Nishanov et al.* does not anticipate the invention of Applicants based upon the legal definition of anticipation. Accordingly, Applicants respectfully request that the Examiner remove the rejection of claims 1-20 and grant an allowance of these claims.

VI. Conclusion

Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicants request that the Examiner indicate allowability of claims 1-20, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,
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¹MPEP §2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F. 2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987)).